

1 Q Okay, let me follow up a little
2 bit. Isn't it true that, in fact, Comcast
3 refuses to be carried in the disputed areas on
4 the same terms that Dish carries MASN?

5 A Well, dish doesn't carry it on an
6 expanded basic. They carry it on their AT100
7 plus which is a different tier than Comcast
8 carries it, so they actually are less
9 penetrated than Comcast is as a whole across
10 the whole footprint.

11 Q Did you answer my question?

12 A Can you re-ask it, please?

13 Q Sure. Isn't it true that Comcast
14 refused to be carried in these areas on the
15 same terms that Dish carries MASN in these
16 areas?

17 A They're not the same terms.

18 Q Is that your testimony? Are you
19 sure about that?

20 A They're not carrying it on the
21 same terms.

22 Q Well, they're not carrying it

1 period, correct?

2 A Correct, and also not the same
3 tier.

4 Q Okay.

5 A Where they do carry it.

6 Q Mr. Orszag, you've been testifying
7 about these agreements a lot. Let's see if we
8 have our foundation correct.

9 A Okay.

10 Q Isn't it true that this agreement
11 that MASN offers all affiliates is your

12 [REDACTED]

13 [REDACTED]

14 A And if you look at Dish they're

15 [REDACTED].

16 Q But that's not the agreement. The
17 agreement requires those things, correct?

18 A I've seen those words, yes.

19 Q Okay, and that's the same
20 agreement that Dish signed, true?

21 A That is correct.

22 Q And that's the same agreement

1 that's been offered to Comcast in the disputed
2 regions, right?

3 A Yes.

4 Q And your testimony is that Comcast
5 refuses to be carried on those areas, the
6 areas that we talked about on those terms,
7 true?

8 A They are not carrying it according
9 to those -- according to the contract terms,
10 yes. The contracts are different for Dish and
11 for Comcast.

12 Q Let's talk about your critique of
13 Dr. Singer's analysis. Would you agree with
14 me that any regression analysis could be
15 corrupted?

16 A Absolutely.

17 Q And you could, for example, add
18 improper explanatory variables and that would
19 screw up the analysis, true?

20 A We should be careful about the use
21 of the word "improper" but of course, the
22 addition of variables could change the

1 results.

2 Q You made a regression model to
3 predict what Comcast prices should be in
4 Philadelphia about six years ago, correct?

5 A That's not true.

6 Q Did you make a regression model in
7 that case?

8 A Not about predicted price, no.

9 Q What was the regression model that
10 you made?

11 A What I was trying to do in that
12 case was to explain the pricing of Comcast in
13 Philadelphia relative to other areas. I was
14 not trying to quote predict a price per se.
15 I was not predicting how to sample a price.

16 Q Fair clarification. So you were
17 trying to explain pricing in that area?

18 A Yes.

19 Q And you used the regression model
20 to do that?

21 A Yes, I did.

22 Q How many explanatory variables did

1 it have?

2 A Ten, give or take ten maybe.

3 Well, it actually had fixed effects in there,

4 I believe, so it actually had thousands, but

5 it had ten real explanatory variables, give or

6 take.

7 Q And what was the interval that you

8 came up with, was it somewhere in the

9 neighborhood of one number and another number?

10 A I think this may be public

11 information because it's -- using -- I used

12 four different techniques, four different

13 models. Each -- the various models came up

14 with a different predicted effect of what was

15 unexplained in Philadelphia.

16 Q With your regression model, do you

17 recall what interval it gave you?

18 A If I recall, it was something on

19 the order of magnitude of price -- we could

20 not explain the prices in Philadelphia by --

21 and this is for the cable systems, not for

22 Comcast SportsNet in Philadelphia, I think it

1 was [REDACTED].

2 Q And those are the numbers spun out
3 by your regression model, correct?

4 A That is correct.

5 Q What was the confidence interval?

6 A Sitting here today, it's been a
7 year since I've looked at that, so I wouldn't
8 know sitting here today.

9 Q Would you use typically a 95
10 percent confidence interval?

11 A Well, in that case it's a
12 different analysis. What I'm using in that
13 case is a dummy variable for Philadelphia and
14 I'm asking the question is it statistically
15 significant at the 95 percent confidence level
16 which is slightly different than a prediction
17 out of sample about what the 95 percent
18 confidence interval is around a predicted
19 price.

20 Q So your alpha variable was five
21 percent?

22 A I am sorry, I didn't understand

1 the question.

2 Q I believe the type one error you
3 were going to accept was five percent?

4 A Yes, I believe the 95 percent is
5 an acceptable bounds to look at.

6 Q And the range of [REDACTED]
7 was that the standard error prediction?

8 A No, it was not.

9 Q And what was that?

10 A They were using four different
11 models and so literally four different
12 regressions and so each regression would have
13 had a standard error around that [REDACTED]
14 [REDACTED]. So it would have differed by the
15 model.

16 Q Would that be the standard of
17 prediction?

18 A No, because it's not a prediction.
19 It's a standard error around the coefficient.

20 Q Would that be a standard error of
21 forecast?

22 A No.

1 Q It would just be a standard error
2 around a coefficient?

3 A Yes.

4 Q You reviewed Dr. Singer's
5 regression analysis in this case, true?

6 A Yes, I did.

7 Q And he included a single variable
8 for all the professional sports events,
9 correct?

10 A Yes, he did.

11 Q And the professional sports events
12 we're talking about are NBA, NHL, and MLB,
13 correct?

14 A That is correct.

15 Q I just want to make sure you've
16 got them all, I'm sorry. Just for the record,
17 we're talking basketball, hockey, and
18 baseball, correct?

19 A That is correct.

20 Q You understand Mr. Wyche's
21 testimony in this regard, don't you, sir?

22 A I have reviewed Mr. Wyche's

1 testimony.

2 Q And Mr. Wyche is an expert in the
3 field of sports programming, correct?

4 A I've not reviewed his
5 qualifications. I'm not going to disagree
6 with you.

7 Q You know that he submitted an
8 expert report?

9 A Yes, I do.

10 Q And you reviewed that, right?

11 A Yes, I did.

12 Q And in that expert report, Mr.
13 Wyche testified that those games are viewed
14 relatively interchangeably for purposes of
15 programming, correct?

16 A That was his testimony, but it's
17 inconsistent with the econometrics.

18 Q Was that his testimony?

19 A Yes, it was.

20 Q You understood his testimony when
21 he said that, true?

22 A Yes.

1 Q And that is the basis, is it not,
2 of Dr. Singer creating one variable for all
3 those games?

4 A That's what Dr. Singer said, yes.

5 Q But you included a separate
6 variable for all of the games divided by
7 baseball, hockey, and basketball, correct?

8 A That is correct.

9 Q So you split up the one number
10 into three numbers, correct?

11 A Yes, I allowed the regression to
12 treat the value of each game differently.

13 Q And you first made a critique of
14 this during your direct testimony which you
15 submitted on May 8, 2008, correct?

16 A That is correct.

17 Q 2009.

18 A That is correct.

19 Q And when you did your first
20 critique, you added an additional three
21 articles, correct?

22 A Right, I allowed functional form

1 of the regression to better match the data.

2 Q Did you add three more the first
3 time you did this?

4 A What do you mean by first time I
5 did this?

6 Q The first time you reviewed Dr.
7 Singer's regression analysis, you took the one
8 number from all of the pro products and you
9 made it into six numbers, correct?

10 A That is correct.

11 Q And so you broke it up by sport,
12 correct?

13 A Yes.

14 Q And then you added a dummy
15 variable for the sport, correct?

16 A That is correct.

17 Q And the dummy variable was whether
18 the sport had any values in there whatsoever,
19 correct?

20 A Precisely.

21 Q So just so I'm clear, what you did
22 the first time was you said zero to 161 MLB

1 games, correct?

2 A Well, there are some that have two
3 teams, so it could actually go to 320.

4 Q But zero to some positive number?

5 A Yes.

6 Q And then you put another dummy
7 variable for zero, no baseball games, one,
8 some baseball games?

9 A Of course, yes.

10 Q So you blew up the one variable of
11 the six, the first time?

12 A I decomposed it into six
13 variables, yes.

14 Q So let me give you a hypothetical
15 that squares more with my understanding of how
16 these things work and I'll grant you this is
17 a layman's understanding.

18 So if the model was trying to
19 predict income based on three variables, the
20 first variable is years of education. The
21 second variable is SAT scores. And the third
22 variable is the number of hours worked a week.

1 Are you with me?

2 A Yes, I am.

3 Q You would have placed the single
4 variable for education with one, the number of
5 years you went to elementary school; two, a
6 dummy variable, zero if you didn't go to
7 elementary school, one if you went to
8 elementary school; three, the number of years
9 of high school you went; four, a dummy
10 variable, zero if you didn't go to high
11 school, one if you went to high school; five,
12 the number of years of college you went to,
13 and a dummy variable, zero, if you didn't go
14 to college and one if you went to college.

15 Is that correct?

16 A I don't know if I fully got all
17 the pieces that you just laid out, but I would
18 let the data speak. I'd let the data tell me
19 what's the best functional form to use. Just
20 as Dr. Singer hasn't used all linear
21 relationships. He's used the log relationship
22 or perhaps a square term and that's what one

1 does. This is just identical to doing that.
 2 And entirely appropriate as a matter of
 3 econometrics and if in the case that you just
 4 laid out that fit the data better, then that's
 5 exactly what I would do.

6 Q So it's not that you disbelieve
 7 Mr. Wyche when he testifies as an expert that
 8 these games really add up the same? Is that
 9 your testimony? I mean do you disbelieve him
 10 or are you relying upon another expert who
 11 says they add up differently?

12 A I'm letting the data speak and the
 13 data tell me that they have different values.

14 Q Okay, so you're not relying upon
 15 anyone else at all. You're just manipulating
 16 the data because you think it's the right
 17 thing to do?

18 A I'm not manipulating the data.
 19 I'm letting the data speak. I run into the
 20 regression and then they produce different
 21 values. It is what it is. Mr. Wyche can say
 22 what he believes to be true, but the data are

1 speaking that the values are different.

2 Q Let's talk about that. When you
3 run the analysis the way you did --

4 JUDGE SIPPEL: Wait, slow down.

5 MR. KIM: Sure.

6 JUDGE SIPPEL: Slow down for a
7 second. Is this for the purpose of critiquing
8 Dr. Singer's regression analysis or -- what
9 exactly is the relevance of this line of
10 questioning?

11 MR. KIM: He has critiqued Dr.
12 Singer's analysis, Your Honor.

13 JUDGE SIPPEL: Yes, he has.

14 MR. KIM: By saying that the
15 regression actually shows a different output
16 than Dr. Singer has arrived. I'm trying to
17 probe the basis of how he reached that so that
18 Dr. Singer can prepare a reply because there's
19 a bare line in his report and we've got some
20 data. I'm trying to figure out how he
21 actually methodically evaluated that data.

22 JUDGE SIPPEL: Is Dr. Singer here?

1 MR. KIM: Yes, sir.

2 JUDGE SIPPEL: And he's going to
3 be able to follow all of this? Okay.

4 MR. KIM: If he's not here, Your
5 Honor, we'll give him a transcript so that he
6 can actually follow this.

7 JUDGE SIPPEL: He bailed out on
8 you.

9 (Laughter.)

10 MR. KIM: He was so satisfied with
11 the questions that I was asking, that he
12 wanted me to freewheel it.

13 JUDGE SIPPEL: Do you have much
14 more?

15 MR. KIM: I'm going to move
16 through this very quickly, Your Honor.

17 JUDGE SIPPEL: I know you're going
18 to speak fast, but are you going to -- is
19 there much more to cover as far as quantity of
20 material on this subject?

21 Well, let's just stay on this
22 subject.

1 MR. KIM: Just about three more
2 questions.

3 JUDGE SIPPEL: Okay. Then I'll
4 ask another question later.

5 MR. KIM: Yes, sir.

6 BY MR. KIM:

7 Q Isn't it true that when you rerun
8 Dr. Singer's analysis with the expanded
9 variables, that baseball games and basketball
10 games are no longer statistically significant?

11 A I actually recall baseball games
12 being statistically significant, I don't
13 recall hockey and basketball being
14 statistically significant.

15 Q Okay, if was my understanding that
16 the only thing that was statistically
17 significant is hockey games. That's not your
18 understanding?

19 A That's not my understanding
20 sitting here today.

21 Q Isn't it true that even when you
22 split up the variables the core prediction

1 that MASN's rates are competitive compared to
2 what Comcast charges for its own RSNs remains
3 statistically significant?

4 A I don't recall the statistical
5 significance of that prediction, but what I do
6 recall is that in the first proposal, the
7 regression I talk about in paragraph 70, the
8 predicted price is a [REDACTED] with a confidence
9 interval of plus or minus [REDACTED] which is why
10 I say it's not a reliable basis for reaching
11 a conclusion.

12 Q So the best prediction in your
13 model is [REDACTED], correct?

14 A That is a point estimate, but it
15 has a big range of confidence.

16 Q Understood, but that is the best
17 point estimate, correct?

18 A That is the point estimate, yes.

19 Q And the range that it includes the
20 very price that MASN is charging, true?

21 A True, and it includes [REDACTED] and
22 [REDACTED].

1 MR. KIM: I'll move it along, Your
2 Honor.

3 JUDGE SIPPEL: All right, well,
4 you're finished with that aspect of the
5 questions?

6 MR. KIM: Yes, sir.

7 JUDGE SIPPEL: The critique of the
8 regression.

9 All right, how much more material
10 do you have to cover?

11 MR. KIM: Your Honor, I think I
12 can get done in another 30 minutes, 35
13 minutes.

14 JUDGE SIPPEL: What time is it up
15 there. five to one?

16 MR. KIM: Yes, sir.

17 JUDGE SIPPEL: Okay. Can you stay
18 with it?

19 THE WITNESS: I may need a
20 bathroom break at some point, very quickly,
21 but we can do a two-minute break.

22 JUDGE SIPPEL: We don't do two-

1 minute breaks, I'm going to tell you right
2 now. But that's all right.

3 Sir, if you are uncomfortable, you
4 tell me and we're going to take a break.
5 Okay?

6 THE WITNESS: I'm fine for now.

7 JUDGE SIPPEL: Is the reporter
8 okay? That's all that counts.

9 BY MR. KIM:

10 Q Mr. Orszag, from a programming
11 perspective, all things being equal, greater
12 coverage is better, would you agree with that?

13 A Are you talking about regional
14 programming?

15 Q Yes, sir.

16 A That should be true, yes.

17 JUDGE SIPPEL: It should be true,
18 or that it is true?

19 THE WITNESS: Well, again, there
20 could be some programming that wants to be
21 highly targeted and so by trying --

22 JUDGE SIPPEL: But he didn't say

1 that.

2 THE WITNESS: Right, but that's

3 why I'm --

4 JUDGE SIPPEL: He didn't say that.

5 THE WITNESS: But he gave a

6 general question --

7 JUDGE SIPPEL: What would be your

8 general answer?

9 THE WITNESS: The answer is
10 generally yes.

11 JUDGE SIPPEL: Okay.

12 BY MR. KIM:

13 Q Isn't it true that's what sports
14 teams want when they sign programming rights?

15 A Generally, yes.

16 Q They want all their fans to be
17 able to tune in and watch them play, correct?

18 A Generally, yes.

19 Q They don't want any game broadcast
20 in any pocket of their region to just wither
21 away, true?

22 A Generally, yes.

1 Q And would you agree with me that
2 seeing a game in a particular region tends to
3 build fan loyalty?

4 A Seeing a fan? I'm sorry.

5 Q I'm sorry, seeing a game broadcast
6 in a particular region tends to build fan
7 loyalty in that --

8 A I'll agree that it tends to, yes.

9 Q And losing it, losing those
10 eyeballs in a particular pocket risks losing
11 those fans, true?

12 A Potentially, yes.

13 Q So if you're a programmer and
14 you're trying to approach one of these sports
15 teams, it hurts you, all the things being
16 equal to have gaps in your coverage as opposed
17 to somebody who doesn't, true?

18 A Potentially, yes.

19 Q You have to bid more to compensate
20 the sports team for what you can't give them,
21 correct?

22 A All other things being equal, yes.

1 Q So Comcast is going to be better
2 off all the time in bidding for programming
3 because MASN doesn't have the same amount of
4 penetration that Comcast does?

5 A No, I will not agree to that.

6 Q Would you agree with me on this,
7 the legal standard for harm in this case is to
8 unreasonably restrain the ability of an
9 unaffiliated video programming vendor to
10 compete fairly?

11 A Those are the legal words, yes. I
12 agree with that.

13 Q And isn't the standard unfair harm
14 to a competitor, in nuts and bolts?

15 MR. BURKE: Objection.

16 THE WITNESS: No.

17 JUDGE SIPPEL: What's the
18 objection?

19 MR. BURKE: It calls for a legal
20 conclusion. I'm not sure what --

21 MR. KIM: I'm asking a question.
22 He offers an opinion on this. I mean I don't

1 see why he's dodging this. It's a simple
2 question.

3 MR. BURKE: Nobody is dodging.

4 JUDGE SIPPEL: It's not a dodge.

5 MR. BURKE: I just want to
6 understand, are you asking for a legal
7 conclusion or an economic conclusion?

8 MR. KIM: I'm asking him what the
9 base -- I'm trying to get to the point of what
10 is the basis for the conclusion that he offers
11 in this case on unfair harm.

12 He has some understanding of what
13 that means or else he couldn't offer an
14 opinion in this case.

15 JUDGE SIPPEL: I am going to
16 overrule the objection. Let's keep moving.

17 THE WITNESS: Can you repeat the
18 question, I'm sorry.

19 BY MR. KIM:

20 Q Do you believe that the standard
21 is unfair harm to a competitor?

22 A No.

1 Q Do you believe the standard is a
2 broad one?

3 JUDGE SIPPEL: That's not a good
4 question.

5 THE WITNESS: I'm not --

6 JUDGE SIPPEL: Wait, that's not a
7 good question. Ask something more --

8 BY MR. KIM:

9 Q Is it fair to say that you
10 consider a narrow question harm to
11 competition?

12 A No, that's not fair. I consider
13 both a harm to a competitor and a harm to
14 competition.

15 Q Let's see about that. You think
16 that the right question is whether Comcast is
17 fundamentally changing whether MASN survives
18 or not, correct?

19 A Well, that's one element of the
20 analysis, yes.

21 Q You want to know whether MASN will
22 have to die and leave the market because of